

Amendment No. 1 to SB1950

Johnson
Signature of Sponsor

AMEND Senate Bill No. 1950

House Bill No. 1883*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 27, is amended by adding Sections 2-20 as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Homeowners' Association Act."

SECTION 3. As used in this part:

- (1) "Association" means a homeowners' association;
- (2) "Board of directors" means the group of persons vested with the management of the association irrespective of the name by which the group is designated;
- (3) "Bylaws" means a written agreement adopted by the association that is attached to and recorded with the declaration and that may contain the provisions described in § 48-52-106;
- (4) "Common area" means property within a development that is owned, leased, or otherwise required by the declaration or any other recorded document applicable to the association to be maintained, repaired, replaced, or operated by a homeowners' association for the use of its members and designated as common area in the declaration or on a recorded subdivision map or plat;
- (5) "Declarant" means the person, entity, joint venture, corporation, partnership, limited partnership, or limited liability company that submits property to a declaration;

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(6) "Declarant control period" means the period of time, if provided in the declaration by Section 8, from the recordation of the declaration until the turnover of control of the association to the lot owners, during which the declarant may unilaterally control the association;

(7) "Declaration" means any instrument, however denominated or titled, including an amendment, modification, restatement, or supplement, that is recorded in the register's office of the county in which the development or any part thereof is located and that:

(A) Imposes on the association maintenance or operational responsibilities for the common areas;

(B) Creates the authority in the association to levy an assessment on lots, the owners or occupants of the lots, or other entities to provide for maintenance or services for the benefit of some or all of the lots in the development, the owners or occupants of the lots, or the common area; and

(C) Is a covenant running with the land and the development, enforceable by and against any and all successors and assigns;

(8) "Development" means real property subject to a declaration that contains no less than four (4) lots for primarily residential use and common areas in which any owner is a member of an association and the owner's lot is subject to assessments pursuant to a declaration;

(9) "Director" means a duly elected or appointed member of the board of directors of an association;

(10) "Governing documents" means the association's declaration, bylaws, charter, or articles of incorporation, and rules and regulations, as amended, modified, or supplemented;

(11) "Homeowners' association" means a nonprofit corporation that:

(A) Manages or contracts for the management of the common areas of a residential multi-family housing development; and

(B) Is governed by a board of directors elected by a majority vote of the individual homeowners;

(12) "Lot" means any parcel of land within a development designated for separate ownership and shown on a recorded or unrecorded subdivision map or plat, other than a common area;

(13) "Member" means an owner of record of a lot in a development subject to a declaration having membership rights as defined in the declaration or other governing documents of the association by virtue of owning such a lot that is encumbered by the declaration;

(14) "Potential purchaser" means a person having a contractual right or option to acquire a lot or a person or entity who intends to execute a mortgage to secure indebtedness; and

(15) "Rules and regulations" means those rules and regulations that the association may adopt as applicable to a lot in a development duly adopted in accordance with the declaration and bylaws of the association, as applicable.

SECTION 4.

(a) This part shall apply to:

(1) All developments subject to a declaration providing for a homeowners' association recorded in the register's office in the county in which the development, or any part thereof, is located on or after January 1, 2017; and

(2) Any association formed prior to January 1, 2017; provided, that the association, by a majority vote of the members, elects to be governed by this part and records evidence of such election in the appropriate register's office of the county in which the development such association administers is located.

(b) Except as otherwise provided in this part, this part shall not apply to:

(1) A development for commercial, industrial, or other nonresidential use;

(2) Any association that is subject to regulation pursuant to the Horizontal Property Act, compiled in part 1 of this chapter or the Tennessee Condominium Act of 2008, compiled in parts 2-5 of this chapter;

(3) A real estate cooperative;

(4) A timeshare development;

(5) A campground; or

(6) A residential development with less than four (4) lots.

SECTION 5.

(a) The principles of law and equity, including, but not limited to, the law of nonprofit corporations pursuant to the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-68, the law of real estate, and the law relative to the capacity to contract, principal and agent, eminent domain, estoppel, negligence, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause shall supplement this part, except to the extent inconsistent with this part.

(b) Every duty governed by this part shall impose an obligation of good faith in the performance or enforcement of this part.

(c) The remedies provided in this part shall be liberally administered so that the aggrieved party is put in as good as a position as if the other party had fully performed.

SECTION 6.

(a) On or after January 1, 2017, a homeowners' association created pursuant to a declaration shall be organized as a nonprofit corporation pursuant to the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-68, and shall be governed in all respects as a nonprofit corporation.

(b) A homeowners' association, its members, and directors shall be subject to all of the obligations, duties, and responsibilities of, and shall have all of the rights and benefits provided in title 48, chapter 53, part 1.

(c) The organizational documents of a homeowners' association shall provide for all of the following:

(1)

(A) Methods of efficient communications with the members of the association, including, but not limited to, the notice of meetings of the association, unless a different method is required by chapter 51, part 1 of this title; and

(B) The ineffectiveness of a good faith effort to deliver notice by any means set out in subdivision (d)(1)-(4) shall not invalidate action taken at or without a meeting;

(2) The compilation, organization, and maintenance of the financial records of the association made available to any member at a reasonable time and place upon the payment of reasonable associated costs;

(3) Reasonable rules and regulations for the use, maintenance, repair, replacement, or modification of any common areas, if any, including penalties for violations;

(4) Power to grant easements, leases, licenses, and concessions through or over the common areas, if any;

(5) Statements regarding the payment of dues and assessments to be provided to a member or other person as provided in the organizational documents, upon the payment of reasonable associated costs;

(6) Preparation of the annual budget of the association; and

(7) Any other act a nonprofit corporation is authorized to do under federal or state law, including § 48-53-102.

(d) In addition to the requirements set forth in subsection (c), the organizational documents of a homeowners' association may provide for the:

(1) Indemnification of and insurance for the association, its officers, and directors;

(2) Fidelity bonds for a person or entity having custody or control of the funds of the association;

(3) Power to acquire real and personal property for the benefit of the association and its members; and

(4) Power to hire and discharge managing agents and other employees, agents, and independent contractors.

SECTION 7. A homeowners' association provided for in a declaration and subject to this part shall be incorporated prior to the conveyance of a lot in the development by the declarant.

SECTION 8. A declaration or the governing documents of a homeowners' association may provide for a period in which the declarant shall maintain control of the election of directors and officers of the association and have a right to alter, amend, or modify the declaration, including, but not limited to:

(1) Completing improvements indicated on plats and plans filed with the declaration;

- (2) Adding real estate to the development;
- (3) Creating lots or common areas within the development;
- (4) Subdividing lots or converting lots into common areas;
- (5) Withdrawing real estate from a development;
- (6) Allowing builders to maintain sales offices, management offices, and signs advertising the development and model units or lots;
- (7) Using easements through the common areas for the purpose of making improvements within the development or within real estate that may be added to the development;
- (8) Merging or consolidating a development with another development of the same form of ownership;
- (9) Appointing or removing an officer of the association or executive board member during a period of declarant control;
- (10) Controlling construction, architectural review, or the aesthetic standards committee or process;
- (11) Attending meetings of the members and, except during an executive session, the executive board; and
- (12) Accessing the records of the association to the same extent as a unit owner.

SECTION 9. If a period of declarant control of the development is established, then the declarant shall also, in the declaration, define the period of declarant control and set forth the process by which control is transferred to the members of the board of directors.

SECTION 10. During the declarant control period provided in Section 9, the declarant may assign all or part of the declarant's rights and obligations regarding the declarant's control of the association and the development by recording in the register's office in the county in which the development or any part thereof is located. The assignment shall be evidenced in

writing of the declarant's rights that shall require that the assignee assume and accept all such rights and obligations.

SECTION 11.

(a) If provided for in the declaration, the declarant, or the declarant's designee, may appoint and remove the officers and members of the board of directors during the period of declarant control.

(b) The declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of the declarant control period, but in that event, the declarant may require that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before the specified actions take effect.

(c) Notwithstanding subsection (a), the declaration may provide that the declarant maintain architectural control of the improvements constructed within the development; provided, that the declarant owns a lot within the development.

SECTION 12. Within ninety (90) days of the transfer of declarant control, as provided for in Section 9, the declarant, or the declarant's designee, shall deliver to the board of directors the following:

- (1) Books, records, and governing documents of the association in the possession of the declarant, or a person or entity under the declarant's control;
- (2) Records of any outstanding and unpaid assessments;
- (3) Contracts of the association with any third parties respecting the operation of the association or the maintenance and upkeep of any property of the association;
- (4) Insurance policies currently in force;
- (5) Names and addresses of the members of the association as shown on the association's records; and

(6) Written unexpired warranties of a contractor or subcontractor, supplier, or manufacturer relative to the common area or any improvements to the common area.

SECTION 13. If a conflict exists between the declaration and the bylaws of a homeowners' association, the declaration shall prevail.

SECTION 14.

(a) Except as may be otherwise provided in the declaration or the governing documents of an association, an association shall have, and there is declared, a lien on every lot for unpaid assessments levied against that lot arising on and from the date the assessment is due as fixed and determined by the board of directors after giving notice as provided in the governing documents of the association. The lien may be enforced or foreclosed as provided in the declaration, the governing documents, or this section. Written notice of the assessment and lien shall be provided to the owner of a lot on which the assessment and lien is claimed by personal delivery or first class United States mail, postage prepaid.

(b) A lien declared by this section shall have priority over all other subsequent liens and encumbrances except state and county ad valorem taxes, municipal improvement assessments, first mortgages, and first deeds of trust securing an indebtedness.

(c) The association, upon delinquency as set forth in the declaration, may record a statement or notice of lien in the register's office of the county in which a lot subject to the assessment is located. The statement or notice shall be verified by an officer, director, or duly authorized agent of the association who has such personal knowledge of the facts. The statement or notice shall include:

- (1) A description of the lot on which the lien is claimed;
- (2) The name of the association claiming the lien;
- (3) The name of the owner of the lot on which the lien is claimed;

(4) The amount of any unpaid assessments together with the date of the assessments; and

(5) The amount of additional interests and costs claimed by the association, including, but not limited to, attorneys' fees, late fees, the costs of collection, and interest.

(d) An association may bring an action in a court having jurisdiction to enforce a lien declared in this section in the county where the lot is located by:

(1) Filing a verified complaint; and

(2) Attaching a copy of the statement of the lien, alleging facts sufficient to prove that the association is entitled to a lien for the claimed unpaid assessment in accordance with the Tennessee rules of civil procedure.

(e) In an action brought by an association to enforce the collection of delinquent assessments pursuant to this section or part or a declaration subject to this part, the court in which the action is pending shall, as part of a judgment, award reasonable attorneys' fees, costs, and interest.

(f)

(1) Notwithstanding subsection (b), the lien shall have priority over a mortgage and deed of trust to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to the association's declaration that would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of an action to enforce the lien of such mortgage or deed of trust; provided, however, the lien shall not exceed one percent (1%) of the original maximum principal indebtedness of a first lien secured by the mortgage or deed of trust.

(2) Notwithstanding subdivision (f)(1) or any provision of law to the contrary:

(A) A foreclosure by the association of the association's lien for assessments shall be subject to any first mortgage encumbering the property, and shall not extinguish the lien of such first mortgage; and

(B) Upon a foreclosure by the holder of a first mortgage lien, the sale and foreclosure shall be subject to the association lien up to the priority amount set forth in this subsection (f).

(3) The association lien shall not have the priority provided for in this section over the mortgages and deeds of trust described in subsection (b) in the event that the lot owner or the holder of a first mortgage or deed of trust on the lot has notified the association in writing of the holder's name and address and the identity of the lot upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date six (6) months of assessments for common expenses due from the lot became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party. The lien under this section shall not be subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

SECTION 15.

(a) The association, upon written request from a lot owner or any lender or their respective authorized agents shall provide to the requesting party, within ten (10) business days following the date of the association's receipt of the request, the information specified in Section 16, to the extent available and to the extent applicable. It shall be the responsibility of a lot owner to advise a lender, upon request, the manner in which the association may be contacted. The association may charge a reasonable fee to provide the information.

(b) When construction of a development is not yet complete, a declarant, prior to the first sale of any interest in a lot to a purchaser who intends to use the lot for residential purposes, shall, upon written request, and within ten (10) business days following the date of the declarant's receipt of the written request, provide the information specified in Section 16, to the extent available, to any purchaser or lender to a purchaser. The declarant or association may charge a reasonable fee to provide the information.

(c) The party requesting the information shall be entitled to rely on the information provided, unless the party has actual knowledge to the contrary.

(d) A request to be made or information to be provided under this part shall be provided in writing.

SECTION 16.

(a) Pursuant to a request made under Section 15, the information to be provided shall include the following:

(1) The name and principal addresses of the declarant, during the period of declarant control only, the association, and the development;

(2) A copy of the recorded, or if not recorded then in substantially final form and to the extent available, declaration, bylaws, charter, or articles of association of the association, and all amendments of and exhibits to the declaration, bylaws, charter, or articles of association of the association;

(3) A copy of the current rules and regulations of the association to the extent such rules and regulations exist;

(4) To the extent that they exist, the most recent balance sheet, income statement, and approved budget for the association, or, if there has never been an approved budget, then the projected budget. The budget shall include:

(A) The projected common expense assessment or the method of calculating each lot's share of the assessment;

(B) A description of any indebtedness secured by the common area or other amenities owned by the association or available for the use of the lot owners; and

(C) A description of any lease affecting the common area or amenities owned by the association or available for the use of the unit owners;

(5) The current monthly assessment and any special assessment applicable to the lot in question, and the amount of any delinquencies in any assessments applicable to the lot;

(6) Any fees or assessments due as a result of a transfer of the applicable lot;

(7) The amount and nature of any additional fees currently assessed against members for the member's use of the common area or other amenities;

(8) A statement of the insurance coverage, which may be provided in the form of an appropriate certificate from the insurer, maintained by the association that includes the types of coverage, limits, and deductibles of the insurance;

(9) A statement of any unsatisfied judgments and a description of any pending suits against the association;

(10) A description of any pending suits filed by the association, other than for the collection of delinquent assessments;

(11) The total amount of current monthly, annual, or special assessments for all lots in the development that are more than sixty (60) days past due as of the most recent available report, but in no event more than ninety (90) days prior to the date of the request; and

(12) Whether the board of directors is still under declarant control and, if so, when that period of control ends.

(b) The declarant or the association, whichever the case may be, shall be under no duty to create a separate document to satisfy this section. Further, the requirements of subsection (a) shall be fulfilled if the information required to be disclosed is provided to the potential purchaser in writing in a clear and concise manner. The disclosure may be summarized or produced in a collection, including plats, the declaration, the organizational documents of the homeowners' association, or other documents; provided, that such documents effectively convey the required information to the requesting party.

SECTION 17. If the declarant prepared or caused to be prepared all or a part of the information required by this part, the declarant may be held liable for any materially false or misleading statement, or for any material omission of any required information, with respect to that portion of the information that the declarant prepared. The declarant shall not be liable for:

(1) Any false or misleading information or for any omission of material fact, unless the declarant had actual knowledge of the statement or omission, or, in the exercise of reasonable care, should have known of the statement or omission; or

(2) Following the end of the period of declarant control, failure of the association to provide information under Section 16 that was prepared by the declarant.

SECTION 18.

(a) Prior to enacting a contract for sale of a lot in a development, a disclosure summary must be presented to the potential owner. The disclosure summary must be in a form substantially similar to the following form:

FOR (NAME OF DEVELOPMENT)

1. AS A PURCHASER OF PROPERTY IN THIS DEVELOPMENT, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS IN A DECLARATION GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS DEVELOPMENT.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____.

4. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.

5. THE DECLARANT MAY HAVE THE RIGHT TO AMEND THE DECLARATION WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE LOT OWNERS.

6. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER,

YOU SHOULD REFER TO THE DECLARATION AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

7. THE GOVERNING DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE REGISTER'S OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DECLARANT.

DATE : _____ **PURCHASER :** _____

(b) The disclosure summary required by subsection (a) shall be supplied by the declarant or by the lot owner if the sale is by an owner that is not the declarant. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until the buyer has received and read the disclosure summary required by this section.

(c) Each contract entered into for the sale of property governed by declaration subject to disclosure as required by subsection (a) shall contain in conspicuous type, which shall include bold and underscored type, a clause that states:

IF THE DISCLOSURE SUMMARY REQUIRED BY TENNESSEE CODE ANNOTATED SECTION 18(a) OF THE TENNESSEE HOMEOWNERS' ASSOCIATION ACT, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY THE BUYER BY DELIVERING TO THE SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 10 DAYS AFTER EXECUTION OF THE CONTRACT FOR THE SALE. ANY PURPORTED

**WAIVER OF THIS VOIDABILITY RIGHT SHALL HAVE NO EFFECT. THE
BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT
CLOSING.**

(d) If the disclosure summary required by subsection (a) is not provided to a prospective purchaser before the purchaser executes a contract for the sale of property governed by the declaration subject to disclosure pursuant to this section, the buyer may void the contract by delivering to the seller or the seller's agent or representative written notice canceling the contract within ten (10) days after the execution of the contract for sale. This right may not be waived by the buyer but shall terminate upon closing the sale.

SECTION 19. Any association created pursuant to this part; any homeowners' association subject to the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-68, created prior to January 1, 2017; any condominium association created pursuant to the Horizontal Property Act, compiled in part 1 of this chapter; any condominium association created pursuant to the Tennessee Condominium Act of 2008, compiled in part 2 of this chapter; and any cooperative association shall have the right to enforce the covenants, conditions, and restrictions contained in such declaration or otherwise applicable to the development by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction contained in such declaration or this part, to restrain violations, to require specific performance, or to recover damages; and the failure by the association or any member to enforce any covenant, condition, or restriction contained in such declaration or this part shall in no event be deemed a waiver of the right to do so thereafter. The expenses of enforcement, including court costs, expenses, and attorneys' fees, by the association or member shall be chargeable to the member violating the covenants and restrictions contained in such declaration or this part.

SECTION 20. Any association created pursuant to this part; any homeowners' association subject to the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-68, created prior to January 1, 2017; any condominium association created pursuant to the Horizontal Property Act, compiled in part 1 of this chapter; any condominium association created pursuant to the Tennessee Condominium Act of 2008, compiled in part 2 of this chapter; and any cooperative association may restrict or prohibit smoking within the common area of the development by recording in the register's office in the county in which the development or any part thereof is located a declaration or an amendment to such declaration that restricts or prohibits smoking within the common area of the development; provided, that the amendment is authorized in accordance with the governing documents of the association.

SECTION 21. This act shall take effect July 1, 2016, the public welfare requiring it.